

IN THE SENATE

SENATE BILL NO. 1222

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO JUDGES; AMENDING SECTION 5-306, IDAHO CODE, TO REMOVE OBSOLETE LANGUAGE; AMENDING SECTION 7-602, IDAHO CODE, TO REMOVE OBSOLETE LANGUAGE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 18-4309, IDAHO CODE, TO REMOVE OBSOLETE LANGUAGE, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 18-4907, IDAHO CODE, TO REMOVE OBSOLETE LANGUAGE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 19-224, IDAHO CODE, TO REMOVE OBSOLETE LANGUAGE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 19-227, IDAHO CODE, TO REMOVE OBSOLETE LANGUAGE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 19-503, IDAHO CODE, TO PROVIDE THAT THE JUDGES OF THE COURT OF APPEALS ARE MAGISTRATES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 19-512, IDAHO CODE, TO REMOVE OBSOLETE LANGUAGE; AMENDING SECTION 19-3006, IDAHO CODE, TO REMOVE OBSOLETE LANGUAGE AND TO PROVIDE CORRECT TERMINOLOGY; REPEALING SECTION 19-3009, IDAHO CODE, RELATING TO THE COMPULSORY ATTENDANCE OF WITNESSES; AMENDING SECTION 19-3602, IDAHO CODE, TO REMOVE OBSOLETE LANGUAGE AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 19-3903, IDAHO CODE, TO REMOVE OBSOLETE LANGUAGE AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 19-3904, IDAHO CODE, TO REMOVE OBSOLETE LANGUAGE AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 19-4304, IDAHO CODE, TO REMOVE OBSOLETE LANGUAGE AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 19-4407, IDAHO CODE, TO REMOVE OBSOLETE LANGUAGE, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 32-401, IDAHO CODE, TO REMOVE OBSOLETE LANGUAGE; AMENDING SECTION 32-402, IDAHO CODE, TO REMOVE OBSOLETE LANGUAGE; AMENDING SECTION 35-106, IDAHO CODE, TO REMOVE OBSOLETE LANGUAGE AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 38-804, IDAHO CODE, TO REMOVE OBSOLETE LANGUAGE AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 38-805, IDAHO CODE, TO REMOVE OBSOLETE LANGUAGE AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 39-258, IDAHO CODE, TO REMOVE OBSOLETE LANGUAGE AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 48-406, IDAHO CODE, TO REMOVE OBSOLETE LANGUAGE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 55-702, IDAHO CODE, TO REMOVE OBSOLETE LANGUAGE AND TO MAKE TECHNICAL CORRECTIONS; REPEALING SECTION 55-717, IDAHO CODE, RELATING TO A CERTIFICATE OF JUSTICE AND AUTHENTICATION; AMENDING SECTION 55-1101, IDAHO CODE, TO REMOVE OBSOLETE LANGUAGE AND TO PROVIDE CORRECT TERMINOLOGY; AND AMENDING SECTION 55-1103, IDAHO CODE, TO REMOVE OBSOLETE LANGUAGE AND TO PROVIDE CORRECT TERMINOLOGY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 5-306, Idaho Code, be, and the same is hereby amended to read as follows:

1 5-306. INFANTS AND INSANE PERSONS -- GUARDIANS AD LITEM. When an in-
 2 fant or an insane or incompetent person is a party, he must appear either by
 3 his general guardian or by a guardian ad litem appointed by the court in which
 4 the action is pending in each case, ~~or by a judge thereof, or a probate judge.~~
 5 A guardian ad litem may be appointed in any case when it is deemed by the court
 6 in which the action or proceeding is prosecuted, or by a judge thereof, expe-
 7 dient, to represent the infant, insane or incompetent person in the action or
 8 proceeding, notwithstanding he may have a general guardian and may have ap-
 9 peared by him.

10 SECTION 2. That Section 7-602, Idaho Code, be, and the same is hereby
 11 amended to read as follows:

12 7-602. REENTRY OF DISPOSSESSED PERSON ON REAL PROPERTY -- PROCEDURE
 13 UPON CONVICTION. Every person dispossessed or ejected from or out of any real
 14 property by the judgment or process of any court of competent jurisdiction,
 15 and who, not having right so to do, reenters into or upon, or takes posses-
 16 sion of, any such real property, or induces or procures any person not having
 17 right so to do, or aids or abets him therein, is guilty of a contempt of the
 18 court by which such judgment was rendered, or from which such process issued.
 19 Upon a conviction for such contempt the court ~~or justice of the peace must~~
 20 shall immediately issue an alias process directed to the proper officer, and
 21 requiring him to restore the party entitled to the possession of such prop-
 22 erty under the original judgment or process, to such possession.

23 SECTION 3. That Section 18-4309, Idaho Code, be, and the same is hereby
 24 amended to read as follows:

25 18-4309. UNAUTHORIZED TAMPERING WITH MEASURING DEVICES. Every per-
 26 son who shall ~~wilfully~~ willfully waste water for irrigation, or who shall
 27 ~~wilfully~~ willfully open, close, change or disturb, or interfere with, any
 28 headgate or water box or valve or measuring or regulating device, without
 29 authority, shall be guilty of a misdemeanor. The water masters or their
 30 assistants, within their district, shall have power to arrest any person or
 31 persons offending, and turn them over to the sheriff or the nearest peace of-
 32 ficer of the county in which such offense is committed, and immediately upon
 33 delivering such person so arrested into the custody of either of such offi-
 34 cers, it shall be the duty of the water master making such arrest to make com-
 35 plaint, in writing and under oath, before the ~~proper justice of the peace, or~~
 36 ~~the probate magistrate~~ judge of such county, against the person so arrested.

37 SECTION 4. That Section 18-4907, Idaho Code, be, and the same is hereby
 38 amended to read as follows:

39 18-4907. SEARCH, SEIZURE, AND CONFISCATION. All moneys and property
 40 offered for sale or distribution in violation of any of the provisions of
 41 this chapter are forfeited to the state. And whenever any judge ~~or justice~~
 42 ~~of the peace~~ shall have knowledge or receive satisfactory information of the
 43 violation of any of the provisions of this chapter within his district or
 44 county, it shall be his duty forthwith to issue his warrant, directed to the
 45 sheriff or constable, to seize and bring before him such moneys and property

1 offered for sale or distribution. And, upon the conviction of any person or
 2 persons for violation of any of the provisions of this chapter, any property
 3 so seized as ~~above~~ provided in this section, shall be sold by the sheriff or
 4 constable at public auction and the proceeds thereof paid over to the county
 5 treasurer of said county for the county school fund.

6 SECTION 5. That Section 19-224, Idaho Code, be, and the same is hereby
 7 amended to read as follows:

8 19-224. COMMANDING RIOTERS TO DISPERSE. Where any number of persons,
 9 whether armed or not, are unlawfully or riotously assembled, the sheriff of
 10 the county and his deputies, ~~or the officials governing the town or city, or~~
 11 ~~the justices of the peace and constables thereof, or any of them, must~~ shall
 12 go among the persons assembled, or as near to them as possible, and command
 13 them in the name of the people of the state immediately to disperse.

14 SECTION 6. That Section 19-227, Idaho Code, be, and the same is hereby
 15 amended to read as follows:

16 19-227. PROCLAMATION OF INSURRECTION. When the governor is satisfied
 17 that the execution of civil or criminal process has been forcibly resisted
 18 in any county by bodies of men, or that combinations to resist the execution
 19 of process by force exist in any county, and that the power of the county has
 20 been exerted and has not been sufficient to enable the officer having the
 21 process to execute it, he may, on the application of the officer, ~~or of the~~
 22 ~~prosecuting attorney, or probate judge of the county,~~ by proclamation to be
 23 published in such papers as he shall direct, declare the county to be in a
 24 state of insurrection, and may order into the service of the state such num-
 25 ber and description of volunteer or uniform companies, or other militia of
 26 the state as he shall deem necessary to serve for such term, and under the
 27 command of such officer or officers, as he shall direct.

28 SECTION 7. That Section 19-503, Idaho Code, be, and the same is hereby
 29 amended to read as follows:

30 19-503. WHO ARE MAGISTRATES. The following persons are magistrates:

31 (1-) The justices of the Ssupreme Ccourt.

32 (2-) The judges of the court of appeals.

33 (3) The district judges.

34 (3-4) Magistrates of the district court.

35 SECTION 8. That Section 19-512, Idaho Code, be, and the same is hereby
 36 amended to read as follows:

37 19-512. DIRECTION TO OFFICERS THROUGHOUT STATE. If a warrant is issued
 38 by a ~~justice of the Supreme Court, judge of a District Court, probate judge,~~
 39 ~~justice of the peace, or any other~~ magistrate, it may be directed generally
 40 to any sheriff, constable, marshal or policeman in the state, and may be exe-
 41 cuted by any of those officers to whom it may be delivered.

SECTION 9. That Section 19-3006, Idaho Code, be, and the same is hereby amended to read as follows:

19-3006. FORM OF SUBPOENA. A subpoena authorized by section 19-3004, Idaho Code, must be substantially in the following form:

The state of Idaho to A.B.:

You are commanded to appear before C.D., a ~~justice of the peace of precinct~~ [district] [magistrate] judge, in county (or as the case may be), at (naming the place), on (stating the day and hour), as a witness in a criminal action prosecuted by the state of Idaho against E.F.

Given under my hand this day of,

G.H., ~~Justice of the Peace~~ [District] [Magistrate] Judge, (or "J.K., Prosecuting Attorney," or

"By order of the court, L.M., Clerk," or as the case may be).

If books, papers or documents are required, a direction to the following effect must be contained in the subpoena: "And you are required, also, to bring with you the following" (describing intelligibly the books, papers or documents required).

SECTION 10. That Section [19-3009](#), Idaho Code, be, and the same is hereby repealed.

SECTION 11. That Section 19-3602, Idaho Code, be, and the same is hereby amended to read as follows:

19-3602. FORM OF SUMMONS. The summons must be substantially in the following form:

County of (as the case may be):

The state of Idaho to the (naming the corporation):

You are hereby summoned to appear before me at (naming the place), on (specifying the day and hour), to answer a charge made against you upon the information of A.B. (or the presentment of the grand jury of the county, as the case may be), for (designating the offense generally).

Dated at the city or precinct of, this day of,

G.H., ~~Justice of the Peace~~ [District Judge] [Magistrate Judge].

(Or as the case may be.)

SECTION 12. That Section 19-3903, Idaho Code, be, and the same is hereby amended to read as follows:

19-3903. ISSUANCE AND FORM OF WARRANT. If the ~~probate~~ magistrate judge or ~~justice of the peace~~ is satisfied therefrom that the offense complained of has been committed, he must issue a warrant of arrest, which must be substantially in the following form:

County of

The state of Idaho to any sheriff, constable, marshal or policeman, in this state:

Complaint, upon oath, having been this day made before me (~~justice of the peace or probate~~ magistrate judge, ~~as the case may be~~), by C.D., that the offense of (designating it generally), has been committed, and

1 accusing E.F. thereof; you are therefore commanded forthwith to arrest the
2 above named E.F. and bring him before me forthwith at (naming place).

3 Witness my hand at, this day of, ~~(And if in probate~~
4 ~~court, seal of court.)~~ A.B.

5 SECTION 13. That Section 19-3904, Idaho Code, be, and the same is hereby
6 amended to read as follows:

7 19-3904. DOCKET AND MINUTES. A docket must be kept by the ~~justice of~~
8 ~~the peace magistrate judge~~, or by the clerk of the ~~probate~~ court, in which
9 must be entered each action and the proceedings of the court therein.

10 SECTION 14. That Section 19-4304, Idaho Code, be, and the same is hereby
11 amended to read as follows:

12 19-4304. COMPELLING ATTENDANCE OF WITNESSES. A witness served with a
13 subpoena may be compelled to attend and testify, or punished by the coroner
14 for disobedience, in like manner as upon a subpoena issued by a ~~justice of the~~
15 ~~peace magistrate judge~~.

16 SECTION 15. That Section 19-4407, Idaho Code, be, and the same is hereby
17 amended to read as follows:

18 19-4407. FORM OF WARRANT. The warrant must be in substantially the
19 following form:

20 County of

21 The state of Idaho to any sheriff, constable, marshal, or policeman in
22 the county of: Proof, by affidavit, having been this day made before me
23 by (naming every person whose affidavit has been taken), that (stating the
24 grounds of the application, or, if the affidavit be not positive, that there
25 is probable cause for believing that -- stating the ground of the applica-
26 tion in the same manner), you are therefore commanded, in the daytime (or at
27 any time of the day or night, as the case may be) to make immediate search of
28 the person of C.D. (or in the house situated, describing it or any other
29 place to be searched, with reasonable particularity, as the case may be) for
30 the following property: (describing it with reasonable particular-
31 ity); and if you find the same or any part thereof, to bring it forthwith be-
32 fore me at (stating the place).

33 Given under my hand, and dated this day of,

34 E.T., ~~Justice of the Peace~~ [District Judge] [Magistrate Judge].

35 (Or as the case may be.)

36 SECTION 16. That Section 32-401, Idaho Code, be, and the same is hereby
37 amended to read as follows:

38 32-401. MARRIAGE LICENSE -- CONTENTS. The county recorder of any
39 county in this state shall have authority to issue marriage licenses to any
40 parties applying for the same who may be entitled under the laws of this state
41 to contract matrimony, authorizing the marriage of such parties, which li-
42 censes shall be substantially in the following form:

1 Know all men by this certificate that any regularly ordained minister
 2 of the gospel, authorized by the rites and usages of the church or denomina-
 3 ~~tion of Christians, Hebrews,~~ or religious body of which he may be a member,
 4 or any judge ~~or justice of the peace~~ or competent officer to whom this may
 5 come, he not knowing of any lawful impediment thereto, is hereby authorized
 6 and empowered to solemnize the rites of matrimony between, of of
 7 the county of, and the state of, and, of of the county
 8 of, state of, and to certify the same to said parties, or either
 9 of them, under his hand and seal, in his ministerial or official capacity,
 10 and thereupon he is required to return his certificate in form following as
 11 hereto annexed.

12 In testimony whereof I have hereunto set my hand and affixed the seal of
 13 said county, at, this day of,

14 Recorder.

15 SECTION 17. That Section 32-402, Idaho Code, be, and the same is hereby
 16 amended to read as follows:

17 32-402. CERTIFICATE AND RETURN. The form of certificate annexed to
 18 said license, and therein referred to, shall be as follows:

19 I,, a, residing at, in the county of, in the state
 20 of Idaho, do certify that, in accordance with the authority on me conferred
 21 by the above license, I did on this day of, in the year, at
 22, in the county of, in the state of Idaho, solemnize the rights of
 23 matrimony between, of, in the county of, of the state of,
 24 and, of, of the county of, of the state of, in the presence
 25 of and

26 Witness my hand and seal at the county aforesaid, this day of,
 27

28 In the presence of [Seal]
 29

30 The license and certificate, duly executed by the minister or officer
 31 who shall have solemnized the marriage authorized, shall be returned by him
 32 to the office of the recorder who issued the same, within thirty (30) days
 33 from the date of solemnizing the marriage therein authorized; and a neglect
 34 to make such return shall be deemed a misdemeanor, and the person whose duty
 35 it shall be to make such return, who shall neglect to make such return within
 36 the time above specified, shall, upon conviction thereof, be punished by a
 37 fine of not less than twenty dollars (\$20.00) nor more than fifty dollars
 38 (\$50.00) to be assessed by any ~~justice of the peace or other~~ court having ju-
 39 risdiction.

40 SECTION 18. That Section 35-106, Idaho Code, be, and the same is hereby
 41 amended to read as follows:

42 35-106. DISAGREEMENT BETWEEN OWNERS -- VIEWERS. If adjoining propri-
 43 etors cannot agree as to the proportion or the particular part of a division
 44 fence to be made, maintained or kept in repair by each respectively, either
 45 party may apply, on five (5) days' notice, to a ~~justice of the peace of the~~
 46 ~~township, if there be one, if not, to the probate~~ magistrate judge, for the

1 appointment of three (3) viewers, who may examine witnesses on oath, and view
2 the premises and must determine:

3 1. If the fence is owned by one (1) proprietor, how much the other must
4 pay as his proportion of the value.

5 2. If the fence or the whole thereof is not built, which part thereof
6 must afterward be built and kept in repair by each.

7 The determination of the viewers must be reduced to writing and signed
8 by them, and filed in the office of the county recorder, and such determina-
9 tion is conclusive upon the parties. If any part of such determination con-
10 sists in fixing the value of a fence for which one (1) party is to pay the
11 other a proportion also fixed, such proportion must be paid within thirty
12 (30) days after notice of such determination, and if not so paid, may be re-
13 covered by action in any court of competent jurisdiction. The viewers are
14 entitled to a fee of three dollars (\$3.00) each, one-half (1/2) to be paid by
15 each proprietor.

16 SECTION 19. That Section 38-804, Idaho Code, be, and the same is hereby
17 amended to read as follows:

18 38-804. APPLICATION OF PROCEEDS. When sold, the proceeds of the timber
19 must be applied, first, to the payment of the charges of the sale, and in liq-
20 uidation of the expenses and damages awarded to the person entitled thereto;
21 and the residue must be paid to the county treasurer, to be by him paid over
22 to the owner, or his representative or assigns, on the production of satis-
23 factory proof of ownership to the probate magistrate judge, and on his order
24 therefor made within one (1) year after its receipt.

25 SECTION 20. That Section 38-805, Idaho Code, be, and the same is hereby
26 amended to read as follows:

27 38-805. REJECTION OF CLAIMANT'S RIGHT -- DISPOSITION OF PROCEEDS. The
28 rejection by the probate magistrate judge of any claimant's right to such
29 proceeds is conclusive, unless, within six (6) months thereafter, he com-
30 mences action therefor. In case no claim is made or sustained to such pro-
31 ceeds, the same must, by the county treasurer, be placed in the common school
32 fund of the county.

33 SECTION 21. That Section 39-258, Idaho Code, be, and the same is hereby
34 amended to read as follows:

35 39-258. ADOPTION OF PERSONS BORN IN IDAHO -- NEW BIRTH CERTIFICATE IS-
36 SUED TO REPLACE ORIGINAL CERTIFICATE -- PROCEDURE -- ADOPTION PROCEEDINGS
37 NOT OPEN TO INSPECTION WITH CERTAIN EXCEPTIONS -- DUTIES OF THE CLERKS OF
38 COURTS ISSUING ADOPTION DECREES -- DUTIES OF STATE REGISTRAR OF VITAL STA-
39 TISTICS. (a) Whenever a final decree of adoption, issued by an Idaho court,
40 declares a person born in Idaho to be adopted by someone other than his or her
41 natural parents, the court shall require the preparation of a report (denom-
42 inated as a certificate in accordance with Idaho court rules) of adoption on
43 a form prescribed and furnished by the state registrar. The report shall in-
44 clude such facts as are necessary to locate and identify the certificate of
45 birth of the person adopted; shall provide information necessary to estab-

1 lish a new certificate of birth for the person adopted; and shall identify
2 the order of adoption and be certified by the clerk of the court.

3 (b) Information necessary to prepare the report of adoption shall be
4 furnished by each petitioner for adoption or the petitioner's attorney. The
5 provision of such information shall be prerequisite to the issuance of a fi-
6 nal decree in the matter of the court.

7 (c) The report of adoption shall, within fifteen (15) days after becom-
8 ing final, be recorded by the clerk of the court with the vital statistics
9 unit in the state department of health and welfare.

10 (d) If a court of some other state issued a decree or report of adoption
11 of a person actually born in Idaho, the certified copy or report may be sim-
12 ilarly filed by the person involved or by the adoptive parents. Failure to
13 file certified copies or reports of said decrees within said period of time,
14 however, shall not bar issuance of a new birth certificate as hereinafter
15 provided. This copy of said decree or report shall be filed with and remain a
16 part of the records of the vital statistics unit.

17 (e) Upon receipt by the vital statistics unit of the certified report of
18 adoption, a new certificate of birth shall be issued (but only in cases where
19 such person's birth is already recorded with the vital statistics unit)
20 bearing among other things the name of the person adopted, as shown in the re-
21 port of adoption, except that a new certificate of birth shall not be estab-
22 lished if so requested by the court decreeing the adoption, the adoptive par-
23 ents, or the adopted person. No such birth certificate shall have reference
24 to the adoption of said person. Such birth certificate shall supplant and
25 constitute a replacement of any birth certificate previously issued for said
26 person and shall be the only birth certificate open to public inspection.

27 Provided however, upon good cause shown and the affidavit of the adop-
28 tive parents that a diligent search has been made, but no certificate of
29 birth for the adoptive child can be located, the probate magistrate judge may
30 order the adoptive child examined, at the expense of the adoptive parents,
31 by a doctor of medicine licensed by the state of Idaho. The examination will
32 be conducted pursuant to rules promulgated by the state board of health and
33 welfare for the purpose of determining those matters required for the is-
34 suanace of an original birth certificate. Upon the examination of the doctor
35 made pursuant to the rules of the state board of health and welfare, the court
36 may order the vital statistics unit to issue an original birth certificate
37 for the adoptive child based upon those facts determined by the examination
38 and included in the court's order. In such case a certified copy of the court
39 order shall be provided to the vital statistics unit.

40 (f) In respect to form and nature of contents, such a new birth certifi-
41 cate shall be identical with a birth certificate issued to natural parents
42 for the birth of a child, except that the adoptive parents shall be shown as
43 parents and the adopted person shall have the name assigned by the decree of
44 adoption as shown on the report of adoption. In a case where a single person
45 adopts another person, any new birth certificate may designate the adopting
46 parent as adoptive.

47 (g) Whenever an adoption decree is amended, annulled or rescinded, the
48 clerk of the court shall forward a certified copy of the amendment, annulment
49 or rescindment to the vital statistics unit in accordance with the time pro-
50 visions in subsection (c) of this section. Unless otherwise directed by the

1 court, the vital statistics unit shall amend the certificate of birth upon
 2 receipt of a certified copy of an amended decree of adoption. Upon receipt
 3 of a certified copy of a decree of annulment or rescindment of adoption, the
 4 original certificate of birth shall be restored to its place in the files and
 5 the new certificate and evidence shall not be subject to inspection except
 6 upon order of a court of record of this state.

7 (h) All records and information specified in this section other than a
 8 new birth certificate issued hereunder, and all records, files and informa-
 9 tion of any court in this state relating to adoption proceedings, shall not
 10 be open to inspection except as provided in section 39-259A, Idaho Code, or
 11 upon the order of a court of record of this state; provided however, that
 12 the provisions of section 16-1616, Idaho Code, to the contrary notwithstand-
 13 ing, any ~~probate court, or the~~ magistrate judge thereof, may furnish a certi-
 14 fied copy of a decree of adoption to any duly authorized agency of the United
 15 States or the state of Idaho without procuring any prior court order there-
 16 for.

17 SECTION 22. That Section 48-406, Idaho Code, be, and the same is hereby
 18 amended to read as follows:

19 48-406. INJUNCTIONS. (1) Parties Authorized ~~To~~ Bring. Any person,
 20 municipal or other public corporation, or the state of Idaho, may maintain an
 21 action to enjoin a continuance of any act or acts in violation of this act.

22 (2) Authority to Issue. If it appears to the court upon any application
 23 for a temporary injunction, or upon the hearing for any order to show cause
 24 why a temporary injunction should not be issued, or, if the court shall find,
 25 in any such action, that any defendant therein is violating, or has violated,
 26 this act, then the court shall enjoin the defendant from doing all acts which
 27 are prohibited in said act.

28 (3) Restraints Which May Be Included. The court may, in its discre-
 29 tion, include in any injunction against a violation of this act such other
 30 restraints as it may deem expedient in order to deter the defendant there-
 31 from, and insure against his committing a future violation of this act.

32 (4) Article or Products Covered. Any injunction against a violation
 33 of this act, whether temporary or final, shall cover every article or prod-
 34 uct handled or sold by the defendant and not merely the particular article or
 35 product involved in the pending action.

36 (5) Undertaking or Bond. As a condition to the granting of a tempo-
 37 rary injunction under this act, the court may require of the plaintiff, ex-
 38 cepting when a municipal or public corporation or the state of Idaho is the
 39 plaintiff, a written undertaking in such sum as the court deems reasonable
 40 and proper in the premises, with sufficient sureties to the effect that the
 41 plaintiff will pay to the person enjoined such costs and damages, not ex-
 42 ceeding an amount specified in said undertaking, as such person enjoined may
 43 incur or sustain by reason of the issuance of a temporary injunction, if it
 44 shall be finally decided that plaintiff was not entitled thereto.

45 Within five (5) days after the service of the temporary injunction, the
 46 defendant may except to the sufficiency of the sureties. If the defendant
 47 fails to do so he is deemed to have waived all objections to them.

48 When excepted to, the plaintiff's sureties, upon notice to the defen-
 49 dant of not less than two (2) nor more than five (5) days, must justify be-

1 fore the judge ~~or a probate judge~~, in the same manner as upon bail or arrest,
 2 and upon failure to justify, or if others in their place fail to justify at
 3 the time and place appointed the order granting an injunction shall be dis-
 4 solved.

5 (6) Injury and Damages. In any action under this act, it is not neces-
 6 sary to allege or prove actual damages or threat thereof, or actual injury or
 7 threat thereof, to the plaintiff. But, in addition to injunctive relief, any
 8 plaintiff in any such action is entitled to recover the amount of the actual
 9 damages, if any, sustained by the plaintiff, as well as the actual damages,
 10 if any, sustained by any person who has assigned to the plaintiff his claim
 11 for damages resulting from a violation of this act.

12 SECTION 23. That Section 55-702, Idaho Code, be, and the same is hereby
 13 amended to read as follows:

14 55-702. BY WHOM TAKEN -- WITHIN LIMITED TERRITORY. The proof or ac-
 15 knowledgment of an instrument may be made in this state within the city,
 16 county or district for which the officer was elected or appointed, before
 17 either:

18 (1-) A judge or a clerk of a court of record; or

19 (2-) A county recorder; ~~or~~

20 ~~3. A justice of the peace.~~

21 SECTION 24. That Section 55-717, Idaho Code, be, and the same is hereby
 22 repealed.

23 SECTION 25. That Section 55-1101, Idaho Code, be, and the same is hereby
 24 amended to read as follows:

25 55-1101. EXECUTION AGAINST HOMESTEAD. When an execution for the en-
 26 forcement of a judgment, obtained in a case not within the classes before
 27 enumerated, is levied upon the homestead, the judgment creditor may apply to
 28 the ~~probate judge~~ district court of the county in which the homestead is sit-
 29 uated for the appointment of persons to appraise the value thereof.

30 SECTION 26. That Section 55-1103, Idaho Code, be, and the same is hereby
 31 amended to read as follows:

32 55-1103. FILING OF APPLICATION. The petition must be filed with the
 33 clerk of the ~~probate~~ district court.